

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 21, 2011 has been entered.

Claims 2 and 7-38 have been cancelled. Accordingly, claims 1 and 3-6 are pending in the instant application.

### ***Claim Rejections - 35 USC § 101***

1. The rejection of claims 1 and 3-6 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter is withdrawn in view of Applicants amendment.

### ***Claim Rejections - 35 USC § 112***

2. The rejection of claims 1 and 3-6 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is withdrawn in view of Applicants amendment.

3. The rejection of claims 1-6 under 35 U.S.C. 112, second paragraph, as being vague and indefinite in the use of the phrase "derived" is withdrawn in view of

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Applicants amendment.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The rejection of claims 1 and 3-6 under 35 U.S.C. 102(b) as being anticipated by Wainwright et al is withdrawn in view of Applicants amendment.

5. The rejection of claims 1 and 3-6 under 35 U.S.C. 102(b) as being anticipated by Robinson is maintained.

Applicants are asserting that Robinson does not disclose that the bacterial culture having fungal like morphology is an in vitro culture of Staphylococcus epidermidis. In addition, there is no evidence that the culture of bacteria isolated by Robinson exhibits a multicellular mammalian tissue like patten when cultured in vitro.

Applicants arguments have been fully considered but are not found to be fully persuasive.

First, Applicants assert that Robinson does not disclose that the bacterial culture

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having fungal like morphology is an in vitro culture of *Staphylococcus epidermidis*.

However, Applicants are respectfully directed to the complete teachings of Robinson.

Page 178, sets forth that "Observing that several bacterial isolates appeared to **self organize in vitro**, one, identified as the Gram-positive facultative anaerobe

***Staphylococcus epidermidis*** and designated as MH, was selected for a study of its morphogenetic properties. (Emphasis added). Robinson further set forth that "The

multicellular self-organization in vitro of ***MH [Staphylococcus epidermidis]*** into ***tissue like sheets and capillary like networks*** shows similarities to morphogenetic patterns observed in in vitro models of mammalian vascular network formation. (See page 179).

Furthermore, Figure 1 shows MH [*Staphylococcus epidermidis*] organizing into multicellular tissue like sheets that contain numerous lacunae [bone]. (See page 178).

Finally, Robinson disclose of "some polygonal areas circumscribed by irregularly tessellated bacterial network." (See page 179).

Accordingly, Robinson continue to disclose each and every limitation of the instantly filed claims.

The claims are directed to an in vitro culture of *Staphylococcus epidermidis* exhibiting a multicellular, mammalian tissue like pattern.

Robinson et al (IDS REF 6; 2001) disclose of the multicellular self organization in vitro of MH (*Staphylococcus epidermidis*) into tissue-like sheets and capillary-like networks. (See page 178 and 179).

For reasons of record, as well as the reasons set forth above, this rejection is

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maintained.

All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Navarro whose telephone number is (571)272-0861.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Nickol can be reached on (571) 272-0835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Navarro/  
Primary Examiner, Art Unit 1645  
November 2, 2011